

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Atlas Commodities, L.L.C, for Certification	)	Case No. 13-0395-GA-AGG
as a Competitive Retail Natural Gas	)	
Broker in Ohio.	)	

**ATLAS COMMODITIES, L.L.C.'S MOTION FOR PROTECTIVE ORDER**

Atlas Commodities, L.L.C. ("Atlas"), by and through its attorney, and pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, moves for a protective order to keep confidential the confidential and/or proprietary information in Exhibits C3, C5 and C7 to Atlas' Application for Certification as a Competitive Retail Natural Gas Broker for the State of Ohio. Pursuant to Rule 2901-1-24(D), Atlas submits via mail three unredacted copies of Exhibits C3, C5 and C7 that have been marked as "Confidential – Trade Secrets" and are to be filed under seal.

A memorandum in support of this Motion is filed herewith.

Date: February 11, 2013

Respectfully submitted,

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**ATLAS COMMODITIES, L.L.C.’S MEMORANDUM IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER**

**I.     Introduction**

In support of Atlas Commodities, L.L.C.’s (“Atlas”) Application for Certification as a Competitive Retail Natural Gas Broker for the State of Ohio (the “Application”), Atlas submits under seal Exhibit C3: Financial Statements, Exhibit C5: Forecasted Financial Statements, and Exhibit C7: Credit Report.

Exhibit C3, Exhibit C5, and Exhibit C7 contain competitively sensitive and highly proprietary business information that is not generally known or available to the public. Atlas requests that the Commission enter an order protecting Exhibits C3, C5 and C7 from public disclosure.

**II.    Argument**

Exhibits C3, C5 and C7 to the Application should be kept confidential because the information contained within those exhibits satisfies the requirements of Rule 4901-1-24(D) and constitutes trade secrets under Ohio law.

Rule 4901-1-24(D) provides that the Commission may issue any order necessary to protect the confidentiality of the information contained in an application when disclosure of the

information is prohibited by state or federal law, and where nondisclosure is not inconsistent with the purposes of Title 49 of the Ohio Revised Code. Rule 4901-1-24(D) specifically notes that trade secrets under Ohio law are a type of confidential information intended to be protected by the Rule.

Similarly, Section 4905.07 of the Revised Code, which provides that facts and information in the possession of the Commission shall be made public, includes an exception for “[r]ecords the release of which is prohibited by state or federal law.” R.C. 4905.07; R.C.

149.43(v). The Ohio Supreme Court has confirmed that trade secrets fall within this exception.

*State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399 (2000) (“Trade secrets are exempt from disclosure under the ‘state or federal law’ exemption of R.C. 149.43.”).

Section 1333.61(D) of the Revised Code defines “trade secret” as:

[I]nformation, including the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, pattern, compilation, program, device, method, technique, or improvement, or any business information or plans, financial information, or listing of names, addresses, or telephone numbers, that satisfies both of the following:

- (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. 1333.61(D). The Ohio Supreme Court has also identified six factors to consider when determining if information constitutes trade secrets:

1. The extent to which the information is known outside the business;
2. The extent to which it is known to those inside the business, i.e., by the employees;
3. The precautions taken by the holder of the trade secret to guard the secrecy of the information;
4. The savings effected and the value to the holder in having the information as against competitors;

5. The amount of effort or money expended in obtaining and developing the information; and
6. The amount of time and expense it would take for others to acquire and duplicate the information.

*State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525 (1997).

The financial statements, forecasted financial statement, credit rating and credit report contained within Exhibits C3, C5 and C7 to the Application are competitively sensitive and highly proprietary business and financial information, which derive independent economic value, actual or potential, from not being generally known to its competitors and from not being reasonably ascertainable by its competitors, who could obtain economic value from its disclosure or use. Disclosure of this sensitive financial information would provide Atlas' competitors with valuable insight into Atlas' business activities. This information is treated as proprietary and confidential in the ordinary course of business of Atlas. Accordingly, after applying the *Plain Dealer* analysis and the definition of "trade secrets" contained in Section 1333.61(D), it is clear that the information contained within Exhibits C3, C5 and C7 to the Application constitutes trade secrets.

### **III. Conclusion**

Because Exhibits C3, C5 and C7 meet the requirements of Rule 4901-1-21(D) and contain “trade secrets” as defined under Ohio law, Atlas requests that Exhibits C3, C5 and C7 now filed under seal be treated as confidential by the Commission.

Respectfully submitted,

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Summary: Motion for Protective Order and Memorandum in Support electronically filed by Mrs. Gretchen L Lange on behalf of Atlas Commodities, L.L.C.